In the High Court of Judicature at Madras

Dated: 02.1.2007

Coram:

The Honourable Mr.Justice M.E.N.PATRUDU

Writ Petition Nos.10665, 10821, 11220, 11638, 11956, 12006, 12192 and 13163 of 2006
and
W.P.M.P.Nos.12073, 12259, 12761, 13232, 13576, 13622, 13775 and 14763 of 2006

1. R.Shajahan S/o Rahiman Khan,
   K.R.S.Fuel Station, BPCL,
   Dealer No.1/533, Salem Main Road,
   Kaveripatnam 635 112.

2. N.Dhanapal, S/o R.Natesa Gounder,
   Nadesa Petrol Bunk,
   1/43, Mariamman Koil Street,
   Bye-pass Road, Harur.

3. M/s.BKPM Sons rep. by
   Partner M.Bhojaraj Varma.
   BKPM Sons, BPCL Dealers,
   Bye-pass Road, Krishnagiri.

4. E.Kannan, S/o T.R.Ethirajulu Naidu,
   M/s.T.R.Ethirajulu Naidu & Son.,
   BPCL Dealers, No.44, Krishnagiri
   Main Road, Dharmapuri.

5. A.Xavier, S/o A.Antonysamy,
   M/s.Pioneer Roadways, BPC.
   Dealers, Royakottai Road, Hosur.

6. D.P.Velayutham, S/o Palaniappa
   Gounder, M/s. D.P.Velayutham & Son.,
   Managing Partner, BKPM Sons,
   BPC Dealers, Krishnagiri.

7. Mrs.K.Rathinakala, W/o Chandrasekaran
   M/s Cak Petroleum Agencies,
   BPL Dealers, Uttangarai.
8. Shree Venkatesswara Fuel and
   Service Station, rep. by
   S.P.Venkatesan, SVFSS, BPC Dealers,
   176-A, SIPCOT I Phase, Hosur 635 126.

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9. S.Jayapal, S/o T.K.Shanmugam,
   Royakottai Fuel Service
   BPOC Dealers, Royakottai.

10. K.Ramakrishnan, S/o K.Krishnan
    M/s Saamy Agencies,
    BPC Dealers,
    Seelanaickenpatty
    Bye-pass, Salem.

11. S.V.Kandhan, S/o A.Velusamy,
    M/s AVM Traders,
    BPC Dealers, Kamalapuram.

12. Salem District Lorry Owners
    Association, rep. by
    Mr.V.Chennakesavan, SDLOA,
    BPC Dealers, Salem. ... Petitioners in W.P.10665/06

1. M/s.Saraswathi Petrol Bunk
   rep. by its Partner,
   P.Balasubramaniam, S/o Palanisamy,
   Bharat Petroleum Dealers,
   Palani Main Road,
   ODDAM CHATRAM-624 619

2. M/s.Coimbatore Lorry Owners Association,
   rep. by its President K.Ramasamy
   S/o Kuppanna Gounder,
   Bharat Petroleum Dealers,
   2/37, Palakkad Road, South Ukkadam,
   Coimbatore 641 001.

3. M/s. Shri Gowri & Company, rep. by
   its Partner K.Durairaj,
   S/o Kuppusamy, Bharat Petroleum Dealers
   41, Railway Feeder Road,
   Tiruppur 641 601.

4. M/s. Jaishree Corporation,rep. by
   Managing Partner B.Govindarajalu,
   S/o G.Balakrishnan,
   Bharat Petroleum Dealers,
   740, Avanashi Road, Coimbatore 641 018.

5. M/s. Karthikeyan & Co., rep. by
   Partner P.Thangaraj,S/o S.M.Perianna,
   Bharat Petroleum Dealers,
   217/315 Avanashi Road,
   Tiruppur 641 603.

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6. M/s. Mallaiyan & Co., rep. by
   Partner M.Duraisamy, S/o P.Mallaiyan,
   Bharat Petroleum Dealers,
   Marappalam, Thirumalayampalayam Pirivu,
   Madukkarai P.O., Coimbatore 641 105.

7. M/s. Pollachi Taluk Lorry Urimaiyalar Sangam,
   rep. by President A.Sunderrajan,
   S/o P.Angamuthu, Bharat Petroleum Dealers,
   11, Gandhi Market Building, Raja Mill Road,
   Pollachi 642 001.

8. M/s. P.A.Rahim Sahib & Sons,rep. by
   Managing Partner, N.Arshath,
   S/o R.Noor Ahamed, Bharat Petroleum Dealers,
   Tiruchy Road Palladam 641 664.

9. M/s. Rajendra Petrofill and Oil Services,
   rep. by its Proprietor V.Selvaraj,
   S/o N.Velusamy, Bharat Petroleum Dealers,
   1419, Sathya Main Road, Ganapathy,
   Coimbatore 641 006.

10. M/s. Ramsons, rep. by Partner
    W.Raj Kumar, S/o D.Williams,
    Bharat Petroleum Dealers,
    1081, Avinashi Road, Coimbatore 641 037.

11. M/s. Lakshmi & Co., rep. by
    Proprietrix,Mrs. A.Subbulakshmi,
    W/o R.S.Arumugham Bharat Petroleum Dealers,
    21/10 Main Road, Mettupalayam 641 301.

12. M/s.Soundri Agencies, rep. by
    Proprietrix, K.Soundri,
    W/o C.K.Kuppuswamy,
    Bharat Petroleum Dealers,
    C.K.K. Industrial Complex,
    Dharapuram Road, Tiruppur 641 108.

13. M/s.Sri Seniaandavar Agencies,
    rep. by its Proprietrix,
    S.Santhana Lakshmi W/o N.Sivalingam
    Bharat Petroleum Dealers,
    Opp. Velan Hotel, Kangeyam Road,
    Tiruppur 641 604.

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14.M/s. Desikan Gas rep. by Proprietrix
K.Karpagavalli, W/o S.Kandasmy
Bharat Petroleum Dealers
20/28F, Karuparayan Koil Street,
Annuparpalayam, Tiruppur.

15.M/s. K.P.Kandaswamy & Sons,
rep. by its Partner K.Paramasivam,
S/o K.P.Kandasamy, Bharat Petroleum Dealers
601, Perundurai Road, Erode 638 011.

16.M/s. P.Natarajan, by its Partner
P.Natarajan W/o P.Palaniswamy Gowder,
Bharat Petroleum Dealers
67/1, Bye Pass Road, Dharapuram 638 656.

17.M/s. Parasakthi Agencies, rep. by
its Partner M.Jeevanantham,
S/o T.R.Muthusamy, Bharat Petroleum Dealers
1/198 Main Road, Chengalpalli 638 812,
Erode District.

18.M/s. Bhavani Auto Service, rep. by its
Partner S.R.Udayakumar, S/o S.Shanmugham
Bharat Petroleum Dealers
31-A, Railway Feeder Road, Tiruppur 641 601.

19. M/s. M.Viswanathan & Co., rep. by its
Partner M.Viswanathan, S/o Marutha Pillai,
Bharat Petroleum Dealers
Bill Bunk, Club Road, Ooty 643 001.

20. M/s. P.Swamikannu & Sons, rep. by
Proprietor K.Sunderraj, S/o R.Krishnaswami,
Bharat Petroleum Dealers
Coonoor Road, Ootacamund 643 001.

21. M/s. Srinivasa Service Station, rep. by
its Managing Partner B.Haridas,
s/o K.P.B.Nair, Bharat Petroleum Dealers
Gudalur 643 212, Nilgiris District.

22. M/s. Nanjiah, rep. by Partner L.Nanjiah,
S/o Lingaiah, Bharat Petroleum Dealers
Selas, Katary 643 213.

23. M/s. Thangavelu Petrol Pump, rep. by
its Partner M.Thangavelu,
S/o V.N.Mariya Pillai,
Bharat Petroleum Dealers,
27/8A Mettupalayam Road, Kotagiri 643 217.

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24. M/s. L.Subbiah, rep. by its Partner
M.Kuthbudeen, S/o Mohamed Hameerdeen,
Bharat Petroleum Dealers
Dindigul Road, Palani.

25. M/s. T.Rajagopala Iyengar & Sons,
rep. by its Managing Partner,
R.Nandakumar S/o R.Ranganathan,
Bharat Petroleum Dealers,
10, Chathram Street, Dindigul 624 001.

26. M/s. Perundurai Lorry Urimaiyalar Sangam,
rep. by its Secretary S.Kumarasamy,
S/o Subramaniam, Bharat Petroleum Dealers
30, 31, Kovai Main Road, Perundurai 638 052.

27. M/s. Saravana Ganapathy Agencies, rep. by
its Partner K.Ponnusamy Gowder,
S/o Karuppa Gowder, Bharat Petroleum Dealers
Valandayamaram, Ambarampalayam P.O.,
Pollachi Taluk.

28. M/s. Kumaravel Agencies, rep. by its
Partner, S.Kumaravel, S/o P.Sivasubramaniam
Gowder, Bharat Petroleum Dealers
Unjavelampatti P.O., Pollachi 642 003.

29. M/s. V.S.C.Agencies, rep. by its
Proprietrix K.Vijayalakshmi,
W/o S.Balasubramaniam,
Bharat Petroleum Dealers
Udumalpet Road, Chinniampalayam,
Pollachi 642 001.

30. M/s. N.S.Rajan, rep. by its Partner
S.Umachander, S/o N.S.Rajan,
Bharat Petroleum Dealers
NSR Buildings, No.224, M.C.Road,
Ambur.

31. M/s. Palaniappa Traders, rep. by its
Proprietor K.Chandrasekar,
S/o P.L.Kandasamy Bharat Petroleum Dealers
Sedhu Road, Jagadapattinam,
Manalmelkudi Taluk, Pudukottai District.

32. Karthik Agencies, rep. by its Proprietor
K.Manimaran, S/o N.B.Krishnaswamy,

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Bharat Petroleum Dealers
Tiruchy Chennai Main Road, Thuraimangalam,
Perambalur 621 220.

33. M/s. Usilampatti Auto Supplies, rep. by its Partner K.Radhakrishnan, S/o T.P.P.Kasi Nadar, Bharat Petroleum Dealers, 138, Virudhunagar Road, Thirumangalam.
34. M/s. K.V.S.Transports, rep. by its Proprietor S.Annadurai, S/o K.V.Samimuthu Udayar, Bharat Petroleum Dealers, KVS Illam, Sethu Road, Kottaipattnam.

35. M/s. Karur Taluk Lorry Owner's Association, rep. by its Secretary C.Singaram, S/o K.Chellappan, Bharat Petroleum Dealers KTLOA, Manimangalam, Karur.

36. M/s. Athi V.Suryanarayana & Athi V.Ramachandran rep. by its Partner A.J.Suriyanarayana, S/o A.S.Janarthanan, Bharat Petroleum Dealers, 154, Dindigul Road, Karur.

37. M/s. C.Vijayakumar, rep. by its Proprietor C.Vijayakumar, S/o V.Chidambaram, Bharat Petroleum Dealers No.1, Dindigul Road, Near Central Bus Stand, Trichy-620 001.

38. M/s. K.Narayanasamy rep. by its Managing Partner K.Narayanasamy, S/o A.Krishnaswamy, Bharat Petroleum Dealers, Athur Road, Opp. Taluk Office, Perambalur 621 212.

39. M/s. Sarada Traders, rep. by its Partner K.K.Rajagopalan, S/o K.G.Krishnaswamy, Bharat Petroleum Dealers 558, Rasipuram Main Road, Athur, Salem District.

40. M/s. S.K.Ariyappa Chettiar & Co., rep. by its Partner S.K.A.Murugesan, S/o S.K.Ariyappa Chettiar,

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Bharat Petroleum Dealers
5-A, Salem Road, Rasipuram 637 408
Namakkal District.

41. M/s. Sudharsan & Company, rep. by its Managing Partner R.Nandakumar, S/o R.Ranganathan, Bharat Petroleum Dealers 8, Chathram Street, Dindigul 624 001.

42. M/s. N.Bhanumathi Agencies, rep. by its Partner Nataraja Sundar, Bharat Petroleum Dealers Bus Stand, Tiruppathur (N.A.) 635 601.

43. M/s. G.V.Murali, rep. by its Proprietor G.V.Murali, S/o Venkatarama Naidu, Bharat Petroleum Dealers 21, Kamakshi Amman Koil Street, Tindivanam 604 001.

44. M/s. Yuvaraja Automobiles, rep. by its Partner Arunodhayam, S/o A.Sambasiva Mudaliar, Bharat Petroleum Dealers 25, Nari Murugappan Street, Pichanur, Gudiyattam 632 602.

45. M/s. Kannappa Traders, rep. by its Partner J.Prakash, S/o E.Jothi, Bharat Petroleum Dealers No.2, Diversion Road, Polur 606 803.

46. M/s. Sati Transports, rep. by its Partner V.B.Madhukumar, S/o V.B.Badrinarayana Lal, Bharat Petroleum Dealers 1/8A, Katpadi Road, Vellore-632 004.

47. M/s. B.J.Lakshmi, rep. by its Proprietor R.Gandhi, S/o V.K.Rama Gounder, Bharat Petroleum Dealers, No.3, Thulasingam Street, Sankaranpalayam, Vellore.

48. M/s. Sri Vasavi Enterprises, rep. by K.B.Jothi, S/o K.Balasubramaniam, Bharat Petroleum Dealers Vriddhachalam Road, Neyveli 607 802.

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49. M/s. B.R's Fuel Centre,rep. by its
Partner K.G.Rajendran, S/o K.H.Govindasamy,
Bharat Petroleum Dealers
213/2, Fakirthakka, Jolarpet 635 851.
... Petitioners in W.P.10821/2006

M/s. Tanjore Filing Station, rep. by its
Partner B.Sukumar, S/o D.Balasubramanian,
Bharat Petroleum Dealer,
No.21, Benington Road, Srinivasan Pillai Road,
Tanjore-1. ... Petitioner in W.P.11220/2006

Sri.Raja Rajeswari Automobiles,
Dealer Bharat Petroleum Corporation Ltd.,
Code No.110975, No.17, Chengam Road,
Thiruvannamalai District,
rep. by its Partner S.Rajendra Kumar.
... Petitioner in W.P.11638/2006

1. M/s S.Palaniappan, rep. by its
Proprietor S.Palaniappan S/o Sengoda
Gounder, Bharat Petroleum Dealers
Udayarpalayam, Thammampatti 636 113.

2. M/s. Sri Karthikeyan Traders, rep. by
Proprietor P.Balasubramanian, S/o
A.Ponnusami, Bharat Petroleum Dealers
Cuddalore Main Road, Kattukottai 636 121.

3. M/s. Star Traders, rep. by its Partner
K.A.Shahul Hamid, S/o O.K.A.Abdul Karim
Bharat Petroleum Dealers
188, Palakkarai, Trichy 620 008.

4. M/s. Sivasakthi Agency, rep. by its
Proprietor K.Ramasami, S/o Kulandavel,
66-A, Second Street, Ganesapuram,
Namakkal 637 001.

5. M/s. Murugavilas Agencies, rep. by
Proprietor A.Palaniappan, S/o Arappuli
Gouder, Bharat Petroleum Dealers
Namagiripet 637 406.

6. M/s. B.R.Rajasekar & Co., rep. by
Partner B.R.Muralidhar, S/o
B.R.Rajasekaran, Bharat Petroleum Dealers
97, Vellore Road, Katpadi,
Vellore 632 007.

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7. P.Shanmugam & Bros., rep. by Partner
   P.Radhakrishnan, S/o P.Desavelu,
   Bharat Petroleum Dealers
   43,44,Kamarajar Street,
   Kanchipuram 631 501.

8. M/s.S.Sundaravel, rep. by Proprietor
   S.Sundaravel, S/o T.P.R.Shanmugam
   Bangalore Highway,Nazarathpet,
   Chennai-602 103.

9. M/s. Ramachandra Agencies, rep. by
   Partner L.Ramachandran S/o L.Ramadoss
   Reddy, Bharat Petroleum Dealers
   AH-104, 4th Street, Anna Nagar,
   Chennai-600 040. ... Petitioners in W.P.11956/2006

Mrs.Vijayalakshmi Gopal,
Wife of Mr.T.Gopal, Dealer, Bharat
Petroleum Corporation Ltd.,
Gandhi Nagar 4th Street,
Thiruvannamalai. ... Petitioner in W.P.12006/2006

1. M/s. Sri Bhavathi enterprises, rep. by
   Proprietor V.Krishnaswamy, S/o R.Varadarajulu,
   Bharat Petroleum Dealers
   Thanthai Periyar Road, Block X,
   Neyveli Township.

2. M/s. Bharat Petroleum Agency, rep. by its
   Proprietor A.Srikanth, S/o C.Annamalai
   Bharat Petroleum Dealers
   32/2, Pondy-Cuddalore Main Road,
   Kirumbakkam, Pondicherry.

3. M/s. Arumugam Traders, rep. by
   its Partner Elavazhagan,
   S/o Subramaniyan, Bharat Petroleum Dealers
   2/1, Main Road, Silluppanur
   Dalavoi 621 730.

4. M/s. Sri Kandasamy Traders, rep. by
   its Partner R.Rajan S/o A.Ramasamy,

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Bharat Petroleum Dealers
L.F. Road, Kachirapalayam 606 207.

... Petitioners in W.P.12192/2006

B.Manivannan, S/o Balasubramaniam
1/369, Sri Rengarajapuram
Puthu Street, Sakkottai,
Kumbakonam.l ... Petitioner in W.P.13163/2006

Vs.

1. Union of India, rep. by
The Secretary to Government,
Ministry of Petroleum,
New Delhi.

2. M/s.Bharat Petroleum Corporation Ltd.,
Bharat Bhavan,
4 & 6 Currimbhoy Road
rep. by its Managing
Director, Ballard Estate,
Mumbai 400 001.

3. The Chief Logistics Manager (Retails)/ South
Bharat Petroleum Corporation Ltd.,
Southern Regional Office,
No.1, Ranganathan Garden,
off 11th Main Road
Anna Nagar, Chennai-40. ... Respondents in all WPs & R1 Nil, RR1 & 2 in W.P. 12006/2006

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus/Declaration to call for the records of the Respondents 2 and 3 in connection with Tender No.SR/TN/POL/Bulk/2006-2009, due for opening on 24.4.2006 2.30P.M. to quash the same and consequently to direct the respondents to continue the dealer-cum-transport system for transportation of petroleum products from bulk storage locations of the second respondent to the outlet of the petitioners through the tank-lorries operated by the petitioners, W.P.No.10821, 11220, 11638, 11956 and 12192/2006. 2. to declare that condition No.10 of the terms and conditions of the Tender for tank lorry requirements for road transportation of bulk petroleum products bearing No.SR/TN/POL/BULK/2006-2009 as arbitrary, illegal, unjust and unsustainable in law and direct the respondents not to insist upon the said condition in respect of tank lorry operators who

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are dealers of the respondents-Corporation. in W.P. 10665 & 12006/2006

3. Writ of certiorari calling for the records of the 3rd respondent herein made in condition No. 10 of Tender terms and conditions and quahs the same. (W.P.No.13163/2006)

For Petitioner
in W.P.10665/2006 .. Mr.ARL.Subndaresan, S.C.,
for M/s.AL.Ganthimathi

For Petitioner
in W.P.10821, 11956
and 12192 of 2006 .. Mr.T.R.Mani,S.C.,
for Mr.T.M.Hariharan.

For Petitioner
in W.P.11220/2006 .. Mr.R.Ashraf Khan

For Petitioner
in W.P.11638/2006 .. Mr.P.Senthil Kumar

For Petitioner
in W.P.12006/2006 .. Mr.K.Hariharan

For Petitioner
in W.P.13163/2006 .. Mr.Srinath Sridevan

For Respondents .. Mr.K.Ethiraj

COMMON ORDER

The facts are identical and the relief sought for in all these writ petitions is the same and the common question of facts and law are involved. Hence, common order is passed.

2. Briefly the facts are:- The petitioners are the Dealers-cum-Transport Operators for their outlets of the second Respondent Bharat Petroleum Corporation Limited. They are having their deals in various places in the State of Tamil Nadu.

2.01 As per the earlier agreement between the petitioners and the second Respondent, the petitioners are operating tank lorries for transportation of petroleum products from the bulk storage of the second Respondent to their respective outlets. Most of the petitioners are operating one tanker lorry sufficient for their requirement and some of them are operating

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two or more such tanker lorries as per the necessity to meet their requirements. The second Respondent used to encourage the petitioners for transportation of the petroleum products through their own vehicles to their outlets in order to maintain purity, quality and timely supply.

3. The second Respondent issued a notice inviting sealed tenders under Two Bid System for locations Karur, Irugur, Tirunelveli and Tondiarpet from Tank-lorry operators for award of location-wise contracts for Tank-lorry requirements for road transportation of bulk petroleum products with effect from 1.6.2006 for a period of two years. There are several terms and conditions stipulated in the tender.

4. The petitioners are questioning the Clause 10 of the tender which is as follows:-

"A.General

10(a) The tenderer should offer minimum 10 No. of tank lorries for Tondiarpet, Karur and Irugur, out of which minimum of 30% tank lorry should be owned by the tenderer.

10(b) The tenderer should offer minimum 5 No. of tank lorries for Tirunelveli, out of which minimum of 30% tank lorry should be owned by the tenderer.

10(c) For the purpose of reckoning the No. of tank lorries, fraction, if any, will be rounded off to the next higher number (i.e. 2.1 will be rounded off to 3).

The owned tank-lorries offered by the Tenderer must be in the name of the tenderer or in the name of Sole Proprietor/ Partner/Director of the said Firm.

B. Evaluation of the tenderers:

3. T/L capacity-wise ranking of the tenderers i.e. L1, L-2, L-3, etc. will be decided on the basis of financial outgo to BPCL by considering the rates quoted in both the sectors and expected volumes of business in each sector of the location. In case, any tenderer has not quoted rates for any of the above-mentioned sectors, then for the purpose of ranking of such tenders, highest rate quoted in that sector by any of the technically qualified tenders shall be considered.

4. Tenderers will be list in ascending order as per their ranking. Tenderer with minimum financial outgo to the Company will be ranked L-1. Tenderer with the next lowest financial outgo will be ranked L-2 and so on. The list will include all the technically qualified tenderers in the ranking based on the rates quoted by them along with the number of tank-lorries offered.

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6. In case, rates offered by L-1 tenderers are acceptable to BPCL, number of tank lorries quoted by the L-1 tenderers will be allocated up to the requirement.

10. In case, for a particular ranking, tank-lorries offered are more than the requirement then the tank-lorries will be taken based on the following order of priority:

i) Tenderer offering highest number of T/Ls of the specific capacity of T/Ls being evaluated.

ii) Maximum number of owned T/Ls offered of the specific capacity of T/Ls being evaluated.

Transporters in a particular ranking will be further ranked based on the above order of priority and allocations will be made only till such time that the full requirement of Tank Lorry is met. Consequently, transporters who rank lower may not get any allocation.

I. Miscellaneous:-

1(a) Tank-lorries to be provided to BPCL for transportation of bulk petroleum products should preferably be covered by National Permit/Zonal Permit at Contractor(s) cost. The contractor's shall have to provide specified number of tank-lorries for operation within the State.

1(b) Where the loading/unloading locations are situated and within the same State and sections where axle load restrictions are imposed, they shall supply tank-lorries meeting axle load restrictions."

The petitioners are questioning the above clauses.

5. The contention of the petitioners is that the second Respondent is intending to award contract to big fleet operators to the exclusion of the dealers like the petitioners who have been hitherto been encouraged by the second Respondent to have their own tanker lorry for transportation of petroleum products to their outlet and this process is implemented effectively so as to ensure purity and timely supply and to ward off adulteration or pilferage by middlemen.

6. The contention of the petitioners is that since the second Respondent is encouraging them they have purchased their own tanker lorries and transported the petroleum products and constantly the second Respondent is showing discrimination and with a mala fide intention in order to encourage the big fleet owners of the lorries has introduced this clause.

7. The forcible contention of the petitioners is that the previous contract period viz., 2003-2006, the second Respondent as well as two other major Public Sector Undertakings operating in the petroleum field viz., Hindustan Petroleum Corporation and

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Indian Oil Corporation invited tenders under Two Bid system from POL Tank-Truck owners and Corporation Dealers/Distributors for award of separate contract for road transportation of bulk POL and it means the dealer is the transporter and earlier contracts clarify that the dealers are transporting the petroleum products of their own but the second Respondent alone is given up the earlier contracts, whereas the other two major Public Sector Undertakings i.e. Hindustan Petroleum Corporation and Indian Oil Corporation are encouraging the dealer-cum-transporter. It is stated that the petitioners are seriously prejudiced by the tender floated by the second Respondent and it is only to eliminate the supply of petroleum products to dealers by various vehicles operated by them and it will lead to several problems like timely transportation, adulteration, pilferage by the middlemen. The petitioners also questioning the same on the ground of arbitrariness and mala fide act on the part of the second Respondent and it is only to encourage one or two parties who are having the big fleet owners and who are having more than 10 number of tanker lorries and hence it is nothing but violating the Constitutional mandates. The petitioners are challenging the act of the second Respondent under Article 14 of the Constitution of India and sought for judicial review.

8. COUNTER:-

The Respondents filed counter.

The Respondents contended that the judicial review is not permissible and the writ petition is not maintainable in tender affairs and the petitioners have no locus stndi as there is no contract between the petitioners and the Respondents in respect of the tender. It is stated that the petitioners are only dealers to sell the petroleum products and they are not the transporter and there is no agreement between the second Respondent and the petitioners. Hence, they cannot question the act of second Respondent. It is contended that it is the right and privilege of the second Respondent to supply its petroleum products to the respective retail outlets and the petitioners cannot question the same as it is the sole discretion of the second Respondent. It is also contended that the transport is granted to a transporter by a selection made by open public tender and there shall be an agreement with the transporter and if there is any violation the transporter will be taken up action. It is stated that earlier the second Respondent with other three major Public Sector Oil Companies used to invite tenders to select the transporters for awarding the transport contract stipulating the terms and conditions mutually agreed upon between all the oil companies taking into consideration of their requirements. But the but now the second Respondent having noticed that Global Companies Transport Petroleum Products not only economically but also efficiently, hence they conducting a brief study and based on the study introduced the

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new system through tender and it is not a violation of public interest and it is not affecting the right of the petitioners to sell petroleum products. It is stated that the second Respondent after a detailed study to attain the economic and efficient transportation of petroleum products including an unprecedented minimum guaranteed mileage to the successful Tenderer as per the terms and conditions stated in the tender. There is no violation. A detailed counter is filed by the second and third Respondents and sum and substance of the counter is that it is the discretion of the second Respondent to call for tenders and petitioners cannot question the same. There can be no judicial review.

9. ARGUMENTS:-

Heard the lengthy arguments of Mr.ARL.Subndaresan, Mr.T.R.Mani,learned Senior Counsel appearing for the petitioners and Mr.R.Ashraf Khan, Mr.P.Senthil Kumar Mr.K.Hariharan, and Mr.Srinath Sridevan learned counsel appearing for the petitioners and Mr.K.Ethiraj, learned counsel appearing for the Respondents.

10.POINTS & ANSWERS:-

The admitted facts are the tender policy of the yesteryears is encouraging the dealers to transport petroleum products. Whereas the tender condition of the present year of the second Respondent is restricting to the transporter who is having more than ten tanker-lorries. A big transporter alone will be eligible for participating through tender. All others having less than 5 tanker lorries are eliminated.

10.01 The earlier tender copy for bulk POL Transportation contract for 2003 which is issued for Hindustan Petroleum Corporation Limited, Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited. The guidelines 10 and 11 read as follows:-

> "10. It is mandatory for the Company Dealers to participate in the public tender for award of transport contract and in case of their failure; company dealers would not be awarded the transport contract.
>
> 11(a) Tenderer should own at least one tank lorry in their name. Rest of the Tank lorries offered may be owned or attached. However, Company at its sole discretion may allow up to three months time for successful tenderer for purchase and/or arranging attachment of Tank lorries.
>
> (b) IN case of attached tank lorries, owners of the tank lorry should execute Affidavit attaching the Tank lorry with the Tenderer for the period up to last date of proposed Agreement period. Format of Affidavit is enclosed with Tender Form.

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(c) IN case, number of TTs of successful tenderers falling in L-1 category is more than the total requirement of TTs for any location, then selection of TTs shall be as under:

(i) All the successful tenderers quoting only one T/T, which is in their own name, shall be taken.

(ii) The required number of T/Ts for upliftment of their own product by dealers/consumers who are successful tenderers also, shall be taken for upliftment of their own product.

(iii) The balance requirement of TTs shall be fulfilled by proportioning the number of TTs available from all successful tenderers to the number of TTs required."

11. Thus the plain reading of the above guidelines disclose that the second Respondent and the other two major Public Sector Undertakings dealing with petroleum products made it mandatory for the company dealers for the participate in the public tender for award of transport contract and in case of their failure, the company dealers would not be awarded the transport contract. Therefore, the company dealers forced to participate in the tender. That system is given up by the second Respondent.

11.01 Further, the guideline 11(a) says the tenderer should own at least one tanker lorry in their name. As the said system is now given given up. While so the Indian Oil Corporation Limited, Hindustan Corporation Limited and IBP Company Limited invited tenders through notice for the year 2006 and the period is for two years which can be extended by one more year and the tender terms and conditions at clause 10(a) and 11(a) reads as follows:

"10(a) Oil Company Dealers/Consumers should participate in this tender for award of transport contract. Petroleum products being essential commodity and having potential to create law and order situation in case of supply-chain break down, the Oil Company reserves the right to give preference to award transport contract to their dealers/consumers for transporting their own load requirements subject to their acceptance of rates offered by the Company.

(b) Oil Company, at its sole discretion reserves the right to induct additional Tank Trucks from Dealers/Consumers of the concerned Oil Company who had been already awarded contract, to meet incremental demand.

11(a) Tenderer must own at least one Tank Truck in their name i.e. Firm or Partner or Director or Proprietor. Additional Tank Trucks offered may be owned or attached. For award of contract, preference

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will be given to the Tank Trucks owned by the tenderer.

(b) In case of attached Tank Trucks offered by the tenderer, owners of such Tank Trucks should execute affidavit attaching the Tank Truck with the tenderer for the full period up to last date of proposed Agreement period. Format of Affidavit is enclosed with tender form. Oil Companies will not deal with the owners of the attached Tank Trucks. For any claim, losses, damages, etc. for the attached Tank Truck, the liability will solely rest with the tenderer."

12. The plain reading of the above disclose that those major Public Sector Undertakings are encouraging their company dealers and consumers to participate in the tender and those tenderer can have at least one tanker truck in their name. While so, the second Respondent has issued a tender with a condition that preference will be given to the big fleet owners. Reading of the guideline of second Respondent discloses that the tenderer should offer minimum ten number of tanker lorries for Tondiarpet, Karur, and Irugur and five number of tanker lorries for Tirunelveli etc. Therefore, the second Respondent has given up the earlier procedure and is not following the earlier guidelines and issuing his own and the reason assigned by the second Respondent is that it is their discretion and it cannot be challenged.

13. In support of their contention the learned counsel for the second Respondent relied upon a judgments of the Apex Court reported in //Global energy Ltd. and another vs. Adani Exports Ltd. and others //[(2005)4 SCC 679].

14. The Supreme Court in almost all the decisions has clarified that the award of contract is essentially a commercial transaction and the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Further, the Supreme Court has clarified that while giving this freedom of contract a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere and such decision must not only be decided by the application of wednesbury principle of reasonableness but must be free from arbitrariness and not affected by bias or actuated by mala fides. The Supreme Court has also clarified that it is well settled that the Courts can scrutinise the award of the contract by the Government or its agencies or of the Public enterprises in exercise of its powers to judicial review to prevent arbitrariness or favouritism. However, there are certain limitation in exercise of power to judicial review in

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such matters. In fact the point as to the extent to judicial review permissible in contractual matters while inviting of issuing bids has been examining the Supreme Court in //Tata Cellular vs. Union of India //(AIR 1996 Supreme Court 11) and various principles to be followed have been laid down and one of the most mandatory and important principle is that the action of the Administrative body must be free from arbitrariness not affecting by bias or actuated by mala fides. The principles laid down in Tata Cellular case has been reiterated by the Supreme Court in several judgments and the law is well settled that normally the tenders are not open to judicial scrutiny the same being in the realm of contract but the Government or its agency or body must have reasonable play in its actions and when there is a discriminatory or when there is mala fide act or the act is actuated by bias depending upon the particular circumstances and based on the facts and circumstances of the case the Courts can interfere with its inducing arbitrary or discriminatory or mala fide act."

15. In the instant case the second Respondent along with the other two major Public Sector Undertakings dealing with petroleum products encouraged the dealers to have their own transport they made the dealers to participate in the tender and they made it as mandatory. They encouraged the dealers to purchase at least one tanker lorry of their own and believing the same the petitioners and other dealers purchased the tankers and are transporting the petroleum products in their own tankers to their outlets taking the entire responsibility with regard to the pilferage, with regard to the adulteration apart from timely transport. The same procedure has been adopted by all other companies except the second Respondent the only reason they are not by the second Respondent because they have some global study and thereby they are imposing condition that a person who owns not less than ten tankers alone will be taken into consideration.

16. During the course of arguments, the learned counsel appearing for the petitioners given the names of only 5 to 6 transport companies who are owning more than ten tankers with a National Permit and in order to limit the transport with those 5 to 6 persons the second Respondent has introduced the new system.

16.01 In the instant case the second Respondent has also insisted for National Permit. When the petroleum products is transporting within the State of Tamil Nadu, itself directing the owner of the tanker to have a National Permit is unnecessary. From the various facts and circumstances as borne out from the records it is clear case of arbitrariness and is discrimination between the big fleet owners and the one tanker

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lorry owner. Therefore it is a case of violating the provisions of Article 14 of the Constitution and mala fide intention and bias of the second Respondent have been highlighted by the petitioners. For all the foregoing reasons this Court is of the opinion that this is a fit case to interfere with and to quash the tender issued by the second Respondent.

17. In the result, all the writ petitions are allowed. Both the parties are directed to bear their own costs. Consequently, all the connected W.P.M.Ps. are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gr.

To

1. The Secretary to Government, Union of India,
Ministry of Petroleum,
New Delhi.

2.The Managing Director,
M/s.Bharat Petroleum Corporation Ltd.,Bharat Bhavan,
4 & 6 Currimbhoy Road,
Ballard Estate, Mumbai 400 001.

3. The Chief Logistics Manager (Retails)/ South
Bharat Petroleum Corporation Ltd.,Southern Regional Office,
No.1, Ranganathan Garden,
off 11th Main Road, Anna Nagar, Chennai-40.

1 cc to Mr. Srinath Sridevan, Advcoate, Sr. 343
1 cc to Mr.R.Ashraf Khan, Advocate, Sr. 120
3 ccs to Mr.T.M. Hariharan, Advocate, Sr. 165, 167 & 168
9 ccs to Mr.K. Ethiraj, Advocate, Sr. 307 to 315

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